

1
2
3
4
5
6
7 JEFFREY AVERY,
8 Plaintiff,
9 v.
10 BAY AREA RAPID TRANSIT POLICE
11 OFFICERS DOES 1-25,
12 Defendant.

Case No. [22-cv-08940-SI](#)

**ORDER TO SHOW CAUSE WHY
CASE SHOULD NOT BE DISMISSED
FOR FAILURE TO PROSECUTE**

13 On December 16, 2022, plaintiff Jeffrey Avery, through his counsel Stanley Goff and Fulvio
14 Cajina, filed this excessive force case against defendants Bay Area Rapid Transit Police Officers
15 Does 1–25. Dkt. No. 1. The case was initially assigned to a Magistrate Judge. After plaintiff filed
16 a declination to proceed before a Magistrate Judge, the case was reassigned to the undersigned on
17 March 15, 2023.¹

18 Defendants have not yet made an appearance in this case, and a review of the docket shows
19 neither a proposed summons nor proof of service. Rule 4(m) of the Federal Rules of Civil Procedure
20 provides that service of the summons and complaint must be made upon defendants within 90 days
21 of filing the complaint. Under the Federal Rules, then, plaintiff should have served defendants by
22 March 16, 2023.

23 Plaintiff is therefore **ORDERED TO SHOW CAUSE** why this case should not be
24 dismissed for failure to prosecute. **Plaintiff shall serve defendants, and file proof of service on**
25 **the docket, no later than March 30, 2023.** The Court cautions plaintiff that failure to do so may

26
27 ¹ Plaintiff failed to respond to three successive Clerk's Notices informing him that he needed
28 to file his consent or declination form. The notices gave deadlines of January 20, February 10, and
March 3, 2023. Dkt. Nos. 5, 6, 7. Plaintiff ultimately filed his consent or declination form on March
15, 2023. Dkt. No. 9.

1 result in dismissal of this action, without prejudice, for failure to prosecute.

2 The initial case management conference currently scheduled for March 31, 2023, is
3 **CONTINUED to April 28, 2023. The parties shall file a joint case management conference**
4 **statement by April 21, 2023.**

5

6 **IT IS SO ORDERED.**

7 Dated: March 24, 2023



8
9 SUSAN ILLSTON
United States District Judge

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
United States District Court
Northern District of California